IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 20TH FEBRUARY 2007 / 1ST PHALGUNA 1928

FAO.No. 43 of 2007()

AGAINST THE ORDER DATED 18/01/2007 IN IA.3824/2006 IN OS.27/2006 of II ADDL.DISTRICT COURT,ERNAKULAM

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: APPELLANT/1ST PETITIONER/1ST PLAINTIFF

K.T.JOHN, S/O. K.R.THOMAS,
KOCHAPPILLY HOUSE, VENNALA P.O.,
CHALIKKAVATTOM (VIA), KOCHI-28.

BY ADV. SRI.K.RAVEENDRAN
SRI.PMM.NAJEEB KHAN

RESPONDENTS: DEFENDANTS / PLAINTIFFS 2 AND 3

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1. ABRAHAM LINCOLN, S/O. JOSEPH,
KUTTIKKATTU HOUSE, CHANGAMPUZHA NAGAR P.O.,
KOCHI-682 033.

2. JOHNSON,
PALAPPARAMBIL HOUSE, SHORANUR P.O.-679 121,
PALAKKAD DISTRICT.

3. K.P.VENU,
RAINBOW CREATIONS, 59/78, ST. VINCENT ROAD,
ERNAKULAM NORTH, COCHIN-18.

4. THE KERALA FILM CHAMBER OF COMMERCE
BY THE SECRETARY, P.B.NO.3577,
M.G.ROAD, COCHIN-35.

5. P.R.CHANDRASEKHAR, S/O. P.M.RAGHAVAN,
SANKARASAI CREATIONS, PANANGADAN HOUSE,
KUTTICHIRA P.O., CHALAKKUDY.

6. GOPINATH, S/O. MADHAVAN NAIR,
FILM DIRECTOR, ASWATHY,
NEAR ERATTAKULANGARA TEMPLE, AMBALAPPUZHA,

ALAPPUZHA DISTRICT.

BY ADV. SRI.P.N.RAMAKRISHNAN NAIR
SRI.P.VISWANATHAN FOR R2
SRI.ANIL KUMAR M.SIVARAMAN
ADV.SRI.G.SREEKUMAR CAVEATOR FOR R1 AND R3

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 20/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Order on I.A.No.430/07 in F.A.O. No.43/07

20.2.07 Dismissed Sd/- M.Sasidharan Nambiar
Judge

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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F.A.O. NO. 43 OF 2007

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Dated this the 20th day of February, 2007

JUDGMENT

First plaintiff in O.S.27/06 on the file of District Court, Ernakulam is challenging the order dated 18.1.07 passed by the learned District Judge vacating the order of injunction originally granted in I.A.3824/06. Respondents are defendants and the plaintiffs 2 and 3. The suit was filed seeking a declaration that the story, theme and script of Monsoon of the plaintiff and that of the defendants `Anamika' are substantially and fundamentally similar and defendants have imitated the story and theme and violated the copy right of the plaintiffs in creating cine film and also for a permanent prohibitory injunction restraining defendants from claiming right and also releasing the film `Anamika'. I.A.3824/06 was filed under Order XXXIX Rule 1 for an order of temporary injunction restraining respondents 1 to 4 from

claiming right or conducting all sorts of work relating to shooting, finalizing or releasing of cine film by name Anamika. Learned Additional District Judge originally granted an order of temporary injunction after hearing learned counsel for the plaintiffs. Respondents appeared and filed an objection. After hearing both the counsel and marking Exts.A1 to A11 on the side of the petitioners and Exts.B1 to B3 the learned Additional District Judge vacated the order originally granted. It is challenged in this appeal.

2. Learned counsel appearing for appellant and respondents 1to 4 were heard.

3. The arguments of learned counsel appearing for appellant was that the story `Monsoon' was written by petitioner and he is the author of that story and it was published in Nana Weekly on 26.6.04 and with the intention of creating a film on that story, appellant had discussed the matter with several Producers and Directors including second respondent and second respondent committed

theft of that theme of the story and published a story by name `Anamika' in Resmi by-monthly during July, August 2006 and it is in violation of the copy right of the appellant and therefore the court below should not have vacated the order originally granted. The argument was that the question whether the story published by second respondent, which is used of for making the film Anamika is the same story which was written by petitioner and published in Nana Weekly, over which appellant has a copy right and court below should not have been decided the question whether there was infringement of the copy right only after taking evidence and therefore order is to be set aside and the application is to be remitted back to the court below for fresh disposal only after recording the evidence.

4.Learned counsel appearing for respondents 1 to 4 argued that the case that appellant had published the story in Nana Weekly was not pleaded anywhere in the plaint and instead what was contended before the trial court was that after

writing the story appellant registered it with fourth respondent. It was pointed out that Ext.A2 produced by appellant to prove the registration with fourth respondent shows that it was not registered with fourth respondent but with an Organization at Chennai and learned District Judge on comparing Ext.A4 story with A5 story published by second respondent as well as Ext.B1 script, found that they are different. It was argued that though central theme in both stories is about the effect of an abortion undergone by a lady and the feeling of guilt in her mind of the lady after undergoing abortion, prima facie appellant has no case and therefore is not entitled to the order of temporary injunction originally granted and there is no reason to interfere with that order.

5. It was argued by learned counsel appearing for appellant that the story "Monsoon" was written and published by petitioner in Nana Weekly on 26.6.04. Such a case was not seen pleaded either in the plaint or I.A.3824/06 the application seeking order of temporary injunction. From the

order passed by learned Additional District Judge, it is clear that such a contention was not raised before the District Judge also. The suit proceeded only on the basis that appellant has a copy right over the story "Monsoon"by virtue of registration of that story with fourth respondent and not on the basis that he had published the story in Nana Weekly prior to the publication of story Anamika by second respondent in Resmi by monthly. As rightly pointed out by learned counsel appearing for respondents, eventhough the contention was that story was registered with fourth respondent, Ext.A2 produced to prove that case reveals that story was not registered with fourth respondent and instead with South Indian Film Writers Association, Chennai. Whatever it be, the crucial question is whether the story seen in Ext.A4 which was allegedly published by appellant was adopted for writing Ext.A5 story or Ext.B1 script. Learned District Judge on comparing the stories found that except the central theme about reaction of a woman undergoing abortion, the stories are entirely

different.

6. Apex Court in **R.G.Anand v. M/s.Delux Films (1978 (4) SCC 118)** laid down the principle to be considered while deciding the question whether there is infringement of copy right in respect of artistic work. Their Lordships held:-

> "Thus, the position appears to be that an idea, principle, theme, or subject matter or historical or lengendary facts being common property cannot be the subject matter of copyright of a particular person. It is always open to any person to choose an idea as a subject matter and develop it in his own manner and give expression to the idea by treating it differently from others. Where two

writers write on the same subject similarities are bound to occur because the central idea of both are the same but the similarities or coincidences by themselves cannot lead to an irresistible inference of plagiarism or piracy. Take for instance the great poet and dramatist Shakespeare most of whose plays are based on Greek-Roman and British mythology or legendary stories like Merchant of Venice, Hamlet, Romeo and Juliet, Julius Ceasar etc. But the treatment of the subject by Shakespeare in each of his dramas is so fresh, so

different, so full of poetic exuberance elegance and erudition and so novel in character as a result of which the end product becomes an original in itself. In fact, the power and passion of his expression, the uniqueness, eloquence and excellence of his style and pathos and bathos of the dramas become peculiar to Shakespeare and leaves precious little of the original theme adopted by him. It will thus be preposterous to level a charge of plagiarism against the great playwright. In fact, throughout his original thinking, ability and

incessant labour Shakespeare has converted an old idea into a new one, so that each of his dramas constitute a masterpiece of English literature. It has been rightly said that "every drama of Shakespeare is an extended metaphor". Thus, the fundamental fact which has to be determined where a charge of violation of the copyright is made by the plaintiff against the defendant is determine whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor

changes or super additions or embellishment here and there. Indeed, if on a perusal of the copyrighted work the defendant's work appears to be a transparent rephrasing or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved. Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in a different form, different tone, different tenor so as to infuse a new life into the idea of the copyrighted work adopted by him. In the latter case there is no

violation of the copyright.

46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. There can be no copyright in an idea subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.

2. Where the same idea is being developed in a

different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion

that the defendant is guilty of an act of piracy.

3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new

work, no question of violation of copyright arises.

5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.

6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid

down by the case-law discussed above.

7. Where however the question is of the violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even

> so, if the viewer after seeking the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved."

7. As laid down by the Apex Court appellant cannot claim copy right on an idea, subject matter or theme. The suit itself is instituted on the allegation that the theme of the story "Monsoon" written by appellant was stolen for creating another story by name `Anamika'. A reading of the two stories does not persuade me to take another view than what was taken by learned Additional District Judge. The finding of court below that prima facie appellant failed to establish infringement of a copy right or that plaintiffs are not entitled to the order of temporary injunction originally granted, does not suffer from any infirmity warranting interference by this

court. Therefore the appeal is dismissed. Learned District Judge is directed to dispose the suit as expeditiously as possible, untrammelled by any observations made in the impugned order or in this judgment.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A.NO.492 /92 & 332/94

JUDGMENT

FEBRUARY, 2007